

## **EXHIBIT H TO THE AFFIRMATION**

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Attorneys for Non-Party/Respondent  
CAMBRIDGE DISPLAY TECHNOLOGY, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SUNNYSIDE DEVELOPMENT  
COMPANY, LLC,

Plaintiff,

vs.

OPSYS LIMITED, a United Kingdom  
Company,

Defendant.

No. C-05-00553 MHP

**DECLARATION OF MICHAEL  
BLACK IN OPPOSITION TO  
PLAINTIFF'S MOTION TO ADD  
CAMBRIDGE DISPLAY  
TECHNOLOGY, INC. AS A PARTY  
TO ACTION AND JUDGMENT**

Date: May 16, 2007  
Time: 1:00 p.m.  
Courtroom: 15, 18th Floor  
Judge: Hon. Marilyn Hall Patel



1 If CDT Inc. had acquired all of Opsys' UK assets for CDT Inc. stock in 2002, then Opsys  
2 would have been taxed on the value of such stock less the value of any tangible assets sold.  
3 The patents developed by Opsys' UK operations had a very low "basis" for UK tax  
4 purposes, even though very significant sums had been spent developing the underlying  
5 technology and prosecuting the patents. If CDT Inc. had acquired these patents, therefore,  
6 Opsys would have been taxed on substantially the entire value of the stock received from  
7 CDT Inc. Because Opsys did not have cash on hand or other means to pay such tax, and  
8 because CDT Inc.'s stock was then illiquid, such a tax would have been a significant barrier  
9 to completing the transaction. It is my understanding, as CDT Inc.'s Chief Financial  
10 Officer, that the transaction whereby CDT Ltd. acquired control of Opsys' UK assets was  
11 structured to avoid such a result.

12 9. For the reasons described in the David Fyfe's declaration, CDT Inc. had no  
13 interest in acquiring Opsys' US assets or liabilities. To the best of my knowledge and  
14 belief, Opsys did not transfer any assets or liabilities of Opsys US Corporation ("Opsys  
15 US") to Opsys UK. Specifically, Opsys did not transfer any intellectual property of Opsys  
16 US to Opsys UK. This is entirely consistent with what CDT Inc. said in its final prospectus  
17 of December 15, 2004 at page F-15, where it stated: "The terms of the Transaction  
18 Agreement [meaning the 2002 Transaction] were entered into by the Company [meaning  
19 CDT Inc. and its subsidiaries] so that it could gain control of and economic interest in the  
20 UK assets and operations of Opsys (which had been transferred to Opsys UK immediately  
21 prior to the transaction) in such a manner to avoid acquiring any interest in any other assets  
22 or liabilities of Opsys." Bunzel Decl. (Dkt. 182) Ex. C at 119.

23 10. Mr. Ainslie, in his declaration dated March 30, 2007 and filed April 2, 2007  
24 (Dkt. 180) ("Ainslie Decl."), suggests that the language quoted immediately above was  
25 "unusual," and he speculates that "the purpose of the transaction may be inconsistent with  
26 the interests of creditors of Opsys Limited." Ainslie Decl. ¶ 8. His speculation is entirely  
27 wrong and reflects a fundamental misunderstanding of the situation. As explained above,  
28 the structure of the 2002 Transaction reflected two principal purposes: a proper business

1 purpose of obtaining certain assets (Opsys' UK assets) but not other assets (Opsys' US  
2 assets); and sound tax planning. There was no purpose to place Opsys' creditors at any  
3 disadvantage. To the contrary, and as further explained in paragraphs 26 through 29 below,  
4 steps were taken so that most of the consideration paid to Opsys and its shareholders would  
5 be escrowed or placed in trust for the protection of Opsys' creditors, rather than simply be  
6 transferred outright to Opsys' shareholders.

7 11. Sunnyside Development Company, LLC ("Plaintiff"), in its motion (Dkt.  
8 179, at 11:17-12:9), and to a lesser extent Mr. Ainslie in his declaration (Dkt. 180, ¶ 7),  
9 insinuate either (a) that CDT Inc. underpaid Opsys for its UK assets or (b) that CDT Inc.  
10 moved the UK assets out of Opsys for the purpose of hindering Opsys' creditors. Neither  
11 suggestion is correct.

12 (a) The insinuation that CDT Inc. underpaid Opsys for its UK assets is not only  
13 wrong, it is circular. The value assigned to the transaction is the then (pre-IPO)  
14 value ascribed to the consideration given by CDT Inc. in the transaction (mainly  
15 stock but also \$5 million in cash). Mr. Ainslie concedes as much by noting that the  
16 value was adjusted downward at December 2004 "due to changes in the value of  
17 Cambridge [CDT Inc.] stock going to the Opsys Limited shareholders." Ainslie  
18 Decl. ¶ 7. Besides, as reflected in CDT's Final Prospectus (Bunzel Decl. (Dkt. 182),  
19 Ex. C, at 143), the price paid was not only **not** too low, it was vastly in excess of the  
20 book value of the assets at the date of the transaction: the book value of the assets  
21 was then \$602,000; the value of research and development then in process was  
22 \$12,200,000; and fully \$14,092,000 of the price was deemed "goodwill," meaning  
23 that the price paid was more than double the book value of that which was acquired.

24 (b) The insinuation that CDT Inc. moved assets out of Opsys for the purpose of  
25 hindering Opsys' creditors is equally wrong, for the reasons stated in paragraph 10  
26 above and for the reasons stated in Mr. Fyfe's declaration.

27 12. Attached hereto as **Exhibit A** is a true and correct copy of Opsys' Disclosure  
28 Letter, dated October 23, 2002, and addressed to CDT Acquisition Corp. (the name, at that



1 time, of CDT Inc.). (From this document we have redacted part 2, section 25; part 3,  
2 section 18; and item 29 of the Disclosure Bundle (because they contain trade secrets and  
3 other commercially sensitive information) and part 2, section 30 (because they contain  
4 individuals' salaries).) Opsys provided this Disclosure Letter to CDT Inc. pursuant to the  
5 Transaction Agreement executed October 23, 2002, by CDT Inc., CDT Ltd., Opsys, Opsys  
6 UK, Opsys US, Opsys 2 Corporation and the directors of Opsys (Alexis Zervoglos and  
7 Michael Holmes) ("Transaction Agreement"), a true and correct copy of which is attached  
8 as Exhibit A to the Bunzel Decl. filed April 2, 2007 (Dkt. 182).

9 13. In addition to the \$5 million cash that Opsys received under the Transaction  
10 Agreement in 2002, CDT Inc. effectively forgave a \$900,000 loan that CDT Inc. had made  
11 to Opsys earlier that year.

12 **Opsys UK (Later Renamed CDT Oxford) and Opsys Remain Separate Entities**

13 14. Opsys UK was renamed CDT Oxford Limited ("CDT Oxford") late in 2002.  
14 Henceforth in this declaration I shall refer to this entity as CDT Oxford.

15 15. At all times after CDT Ltd. acquired control of CDT Oxford's operations,  
16 CDT Oxford maintained employees, books of accounts, and bank accounts separate from  
17 those of CDT Inc. and CDT Ltd. CDT Ltd., Opsys and CDT Oxford all have their own  
18 audited accounts, as required by UK law. Each maintains its own share register. Each has  
19 its own General Ledger. Each has its own board of directors.

20 16. Through December 2004, Opsys' Chief Executive Officer and Chief  
21 Financial Officer were Michael Holmes and Alexis Zervoglos. Damoder Reddy was  
22 employed as Chief Operating Officer by either Opsys or Opsys US. Which of these two  
23 companies employed Mr. Reddy was the subject of a legal action that settled out of court.  
24 None of these individuals has ever been an employee of CDT Inc. or CDT Ltd. None of  
25 them has ever been a member of CDT Inc.'s Board of Directors.

26 17. None of the members of CDT Inc.'s Board of Directors has ever been a  
27 member of the Board of Directors of Opsys, Opsys UK, or CDT Oxford.

28

1           18.     Beginning in October 2002, CDT Inc. reported 100% of the net profit or loss  
2     of CDT Oxford in accounts using a method similar to the equity method. This means that  
3     CDT Oxford's net profit or loss was reported as an item of other income or expense.  
4     Effective January 1, 2004, CDT Inc. was required as a matter of accounting to fully  
5     consolidate CDT Oxford's results as part of CDT Inc.'s consolidated financial statements.  
6     This was described in the Final Prospectus of CDT Inc. at F-33 and F-34 (Bunzel Decl.  
7     (Dkt. 182) Ex. C at 142-43). Nevertheless, CDT Oxford continued to be a company that is  
8     separate and distinct from both CDT Inc. and CDT Ltd. As noted above, CDT Oxford  
9     observes the normal corporate formalities.

10                   **The 2004 Transactions and the IPO of CDT Inc.**

11           19.     After the 2002 Transaction, a dispute arose between Opsys and CDT Inc.  
12     over whether the anti-dilution provisions of the Transaction Agreement had been triggered  
13     by a financing entered into by CDT Inc. that resulted in the issuance of additional preferred  
14     stock. Were the anti-dilution provisions of the Transaction Agreement triggered by this  
15     financing, Opsys' shareholders would be entitled to more shares of CDT Inc.'s common  
16     stock if certain put or call options provided for in the Transaction Agreement were  
17     exercised. As stated in the Transaction Agreement, a number of events could cause such an  
18     options exercise. Among the listed events that could lead to an options exercise was an  
19     initial public offering ("IPO") by CDT Inc.

20           20.     CDT Inc. did hope to go public. On July 30, 2004 CDT Inc. filed a  
21     registration statement with the Securities and Exchange Commission.

22           21.     To settle this anti-dilution dispute, and in anticipation of CDT Inc.'s IPO, the  
23     parties to the Transaction Agreement entered into a Settlement and Amendment Agreement  
24     on August 3, 2004, which amended the Transaction Agreement.

25           22.     On December 14, 2004, the same parties, as well as a newly created party,  
26     Opsys Management Limited ("Opsys Management"), entered into an Amended and  
27     Restated Settlement and Amendment Agreement (the "Amended Settlement Agreement"), a  
28     true and correct copy of which is attached as Exhibit D to the Bunzel Decl. filed April 2,

1 2007 (Dkt. 182). I was involved in the negotiations leading to the execution of these two  
2 settlement agreements.

3 23. CDT Inc. priced its IPO December 15, 2004. Market trading on Nasdaq  
4 commenced on December 16, 2004. The IPO formally closed on December 21, 2004. The  
5 IPO price of CDT Inc.'s common stock was \$12 per share.

6 24. On December 29, 2004, and pursuant to the Transaction Agreement and the  
7 Amended Settlement Agreement, Opsys' shareholders exercised their option requiring CDT  
8 Inc. to acquire all the stock of Opsys in exchange for 931,633 shares of CDT Inc.'s  
9 common stock (the "Opsys Limited Option").

10 25. The exercise of the Opsys Limited Option rather than either one of the other  
11 two options provided for in the Transaction Agreement resulted in tax benefits for Opsys.  
12 Had Opsys exercised its put option requiring CDT Inc. to acquire the remaining 84%  
13 interest in CDT Oxford, Opsys would have become liable for a tax charge of approximately  
14 30% of the consideration received from CDT Inc. Exercise of the call option permitting  
15 CDT Inc. to acquire the remaining 84% interest in CDT Oxford also would have resulted in  
16 a taxable gain by Opsys.

17 26. The 2004 transactions as structured protected Opsys' creditors in at least  
18 three ways, as described in paragraphs 27, 28 and 29 below.

19 27. First, shares of CDT Inc. stock were held back to cover known and identified  
20 liabilities. As required under the Amended Settlement Agreement, CDT Inc. withheld from  
21 the option exercise price 133,938 shares of CDT Inc. stock to ensure satisfaction of Opsys'  
22 identified liabilities, as set forth in Schedule A to the Amended Settlement Agreement.

23 28. Second, 422,610 shares of CDT Inc. stock went into an escrow to cover the  
24 Reddy claim referred to in paragraph 16 above and unidentified liabilities, including  
25 unidentified contingent liabilities.

26 29. Third, the remaining CDT Inc. shares paid for Opsys were issued to Opsys  
27 Management pursuant to a "Deferred Consideration Agreement" entered into to protect  
28 Kodak and certain other known creditors. Attached hereto as **Exhibit B** is a true and



1 correct copy of the Deferred Consideration Agreement, dated December 29, 2004, between  
2 Opsys Management and Opsys' shareholders at the time. (From this document we have  
3 redacted, on privacy grounds, the addresses but not the names of the shareholders.) The  
4 Amended Settlement Agreement (clause 5.1) required the delivery of a complete and  
5 correct copy of the Deferred Consideration Agreement to CDT Inc. None of the CDT Inc.  
6 shares held by Opsys Management has been paid out to the former shareholders. The  
7 shares are to be paid first to a former trade creditor of Opsys (Kodak), then to former debt  
8 holders that had provided venture capital to Opsys, and only then to the former  
9 shareholders.

10 30. As of December 29, 2004, when CDT Inc. acquired all of Opsys' stock, I  
11 had no idea that Plaintiff was suing Opsys and CDT Ltd.

12 31. Neither I, nor, to my knowledge, anyone at CDT Inc. or CDT Ltd., knew at  
13 the time of CDT Inc.'s IPO that Plaintiff was planning legal action against CDT Inc. or  
14 against CDT Ltd.

15 32. Had CDT Inc. known at the time of its IPO that Plaintiff was planning legal  
16 action against it or against CDT Ltd., or would claim that CDT Inc. or CDT Ltd. might  
17 have some liability on Plaintiff's lease of real property to Opsys, CDT Inc. would not have  
18 permitted the exercise of the option whereby it acquired Opsys' stock.

19 **The 2005 Transaction**

20 33. In May 2005, to simplify its corporate structure pursuant to a plan developed  
21 in November 2004 that could not be implemented until after the completion of CDT Inc.'s  
22 acquisition of Opsys, CDT Inc. transferred both its 16% interest in CDT Oxford and its  
23 100% interest in Opsys to CDT Ltd. In addition, Opsys transferred its 84% interest in CDT  
24 Oxford to CDT Ltd.

25 34. As a result, both CDT Oxford and Opsys are now direct, wholly owned  
26 subsidiaries of CDT Ltd. and indirect subsidiaries of CDT Inc. CDT Ltd. is a second-tier  
27 subsidiary of CDT Inc., so CDT Oxford and Opsys are third-tier subsidiaries. Mr. Ainslie's  
28 statements to the contrary in his declaration (Ainslie Decl. (Dkt. 180) ¶¶ 9-10) are wrong.

38. Attached hereto as **Exhibits C, D and E** are true and correct copies of the cover page and Exhibit 21.1 (Exhibit 21.1 entitled “List of Subsidiaries of the Registrant”) to each of the last three annual reports on Form 10-K filed by CDT Inc. Exhibit C is from 2004; Exhibit D is from 2005; and Exhibit E is from 2006. As they clearly show, Opsys was a subsidiary of CDT Inc., and CDT Oxford was a subsidiary of Opsys (hence a second-tier subsidiary of CDT Inc.), as of December 31, 2004, but both became subsidiaries of CDT Ltd. in 2005 and have remained so ever since.

## 28 //

42. As a director of Opsys, Mr. Chandler participated in a mediation in this action on behalf of Opsys.

43. As a director of Opsys, I participated in a settlement meeting with Plaintiff's property manager, Frank Chiu, on February 17, 2007. David Fyfe, Chairman and Chief Executive Officer of CDT Inc., was also present during this settlement meeting to represent the interests of CDT Inc. (See Mr. Fyfe's declaration for his statement as to why he attended this meeting.)

44. I participated in another settlement meeting on February 26, 2007. Andrew Fields, in-house counsel for CDT Inc., attended this meeting to represent CDT Inc.

45. CDT Inc. took an interest in this litigation principally because Plaintiff had named CDT Ltd. as a defendant in its original complaint and its first amended complaint, and because Plaintiff had moved to add CDT Inc. as a defendant in November 2005.

46. Because of Plaintiff's attempts to sue CDT Inc. and CDT Ltd., Mr. Fields attended the trial of Plaintiff's complaint.

47. I was excluded from the first six days of trial and could not attend on Opsys' behalf because I was a potential witness.

48. Although Mr. Chandler remained a director of Opsys at that time and a part-time employee of CDT Ltd., he was not obliged to travel outside the UK under the terms of his contractual arrangements. He therefore could not be required to attend the trial.

49. The only other director of Opsys at the time, Dr. Jeremy Burroughes, did not attend the trial because he is a scientist by training and would not have been able to represent Opsys' interests effectively.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of May, 2007 at Royston, England, UK.



Michael Black